discovered evidence. Therefore, any difference in result that may be expected upon the new trial will be caused rather by the absence of the formerly uncontradicted evidence rather than by the effect of the newly-discovered evidence upon the jury.

PARENT AND CHILD—EMPLOYERS' LIABILITY ACT AS AFFECTING FATHER'S RIGHT TO RECOVER FOR INJURIES TO CHILD.—Plaintiff's minor son, while engaged as an employee of defendant in interstate commerce, was injured through the negligence of the defendant. *Held,* the father can maintain an action independent of the son's right under the Federal Employers' Liability Act, for services and earnings of said minor son up to the time of his majority. *Nelson* v. *Illinois Central R. Co.* (Iowa 1915), 155 N. W. 169.

At common law the parent had a right to recover for loss of services and earnings up to twenty-one when a minor child was wrongfully injured. *Hussey* v. *Ryan,* 64 Md. 426, 54 Am. Rep. 772. The principal case supports the doctrine that such common law right is not removed by the Federal Employers' Liability Act. The same question arose in *Tonsellito* v. *N. Y. Cent. & H. R. R. Co.,* 87 N. J. Law 651, 94 Atl. 804. The court said, "But we do not construe the federal act as repealing either expressly or impliedly the father's right of action as it existed at common law. It purports to deal only with cases involving the death of the employee, and in the absence of an intent, clearly expressed or necessarily implied, that congress intended to take away by this corrective and remedial act the legal status of third parties as fixed by the immemorial rules of the common law, we must assume that such rights still subsist unimpaired." The Massachusetts court has asserted the same doctrine with reference to the Workmen's Compensation Act of the state in *King* v. *Viscoloid Co.,* 219 Mass. 420, 106 N. E. 988. Vide 13 MICH. LAW REV. 428.

POWERS—EXERCISE OF A NON-EXCLUSIVE POWER TO APPOINT AMONG CHILDREN.—By will a life-estate in certain property was given to X, together with a power to appoint it to his wife and heirs at law; in default of appointment, the property was to go to them according to the law of descent in force in Kentucky at that time. By will X appointed $1,000 to each of his brothers and sisters, and the rest, nearly $150,000, to trustees for the use of his wife for life, and then for his children as she should appoint by will. The distribution was made according to the terms of the will. The wife died three years later, having made an appointment of all the property. This action was brought by the heirs-at-law of X to have the appointment made by his will set aside, on the ground that under the power through which he made the appointment he was bound to appoint a substantial share to each of them, and that the $1,000 each had received was not such substantial share. *Held,* the appointment was invalid, being under a non-exclusive power, and not giving to each member a substantial share. *Barret's Ex'rs* v. *Barret* (Ky. 1915), 179 S. W. 396.

In reviving the illusory appointment doctrine the Kentucky court has had recourse to an argument almost as old as the subject of appointments.

The power under which X acted has always been regarded as non-exclusive in Kentucky. This seems to be established by *McGaughey's Adm'r* v. *Henry,* 15 B. Mon. 383; *Degman* v. *Degman,* 98 Ky. 717, 34 S. W. 523; *Clay* v. *Smallwood,* 100 Ky. 212, 38 S. W. 7; and *Levi* v. *Fidelity Trust Co.,* 121 Ky. 82, 88 S. W. 1083. These cases also refer by dictum to the illusory appointment doctrine as the settled rule and the equitable doctrine, but since the rule was in no wise involved in the cases, the court in the principal case does not profess to rely upon them. The court declares "the doctrine is founded upon the principle that where a donor of a power of appointment has confided to the donee thereof a non-exclusive power to dispose of the estate to the members of a particular class, the donee must fairly and reasonably execute the power." On the other hand, there are many cases which have held the opposite view, some on the ground that such a power is exclusive, and others on the ground that equity has no right to interfere with the exercise of the discretion of the donee as to the amounts to be assigned to each member, so long as each is given some share. In *McCamant* v. *Nuckols,* 85 Va. 331, the court held that any share, however small, was enough; this holding is supported by *Rhett* v. *Mason,* 18 Gratt, 44, and *Morris' Ex'rs* v. *Morris,* 33 Gratt. 51. In *Hatchett* v. *Hatchett,* 103 Ala. 556, the court says that the doctrine has no standing in that court, citing with approval the English cases of *Spencer* v. *Spencer,* 5 Ves. Jr. 362; *Butcher* v. *Butcher,* 9 Ves. 382; *Morgan* v. *Surman,* 1 Taunt. 289; and *Bax* v. *Whitbread,* 16 Ves. 15, all of which disapprove of the illusory doctrine. In *Graeff* v. *DeTurk,* 44 Pa. St. 527, the court absolutely refuses to recognize any such doctrine as existing in that state. Illinois has declared that all powers to appoint to a class should be regarded as exclusive and that the appointment of any amount to a member of the class will be sufficient. *Hawthorne* v. *Ulrich,* 207 Ill. 430, 69 N. E. 885. The following states have passed statutes making all powers exclusive: Alabama, Michigan, Minnesota, New York, Wisconsin, North Dakota, South Dakota, Oklahoma; and England has a statute (1 Wm. 4, c. 46) which declares that no appointment shall be void by reason of the amount given to any of the class. It seems strange that a doctrine so old as this one, which has been thoroughly tried out by the courts of several jurisdictions and found to be useless as a practical working basis, should be adopted by the Kentucky court. What would be a substantial share under an appointment in Kentucky must of necessity be a matter of guess-work in each case until the court has ruled upon that case. The legislature may find it necessary to adjust the matter, as has been done in England and so many of the states.

SALES—CONSTITUTIONALITY OF BULK SALES ACT.—The Supreme Court of Ohio, reversing the decision of the trial court, held the Ohio Bulk Sales Act to be constitutional. *Steele, Hopkins & Meredith Co.* v. *Miller* (1915), 110 N. E. 648.

This court seems to have abandoned the position that it took in *Miller* v. *Crawford,* 80 Oh. St. 207, and *Williams-Thomas Co.* v. *Preslo,* 84 Oh. St. 328, which seems to have been the only dissent from the great array of